


No. 45098-4-II

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY 
DEPUTY

**THE COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON**

In the Matter of the Estate of:

MICHAEL K. HARDER

Deceased.

CHRIS HARDER and DAVID HARDER

Appellants

V.

PHILLIP HARDER

Respondent

ON APPEAL FROM CLARK COUNTY SUPERIOR COURT

Clark County cause No. 07-4-00949-4

APPELLANTS' REPLY BRIEF

**CHRIS S. HARDER
1926 Novato Blvd.
Novato, CA. 94947**

**DAVID C. HARDER
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SUMMARY OF ARGUMENT

For purposes of RCW 11.96A.300 of the Trust and Estate Dispute Resolution Act (TEDRA). The Appellants Chris and David (C&D hereinafter) sought to resolve by mediation the reasonableness of fee's charged to the Estate. Both sides agreed upon mediation as well as the personal representatives' (Phil Harder hereinafter) counsel picked the mediator.

DISCUSSION

It took Phil Harder seven years to administer the estate. The estate was once worth \$7,900,000 after paying \$2,000,000 in estate taxes today it's worth \$3,900,000 after Phil Harder sold \$1,500,000 in real properties to pay the estates taxes. He charged the estate \$125.00 per hour because he said to be a licensed broker. We have over \$2,000,000 missing. Of course he will argue that C&D do not have standing and that the court has no authority for C&D to be heard.

This was not a complex estate the deceased owned everything except one John Deer Lawnmower. Which John Deer willingly took back after a simple phone call. There were no creditor's claims. The claim of a meretricious relationship was settled at a Christmas dinner held by one of

the heirs. Phil Harder had very little to do with this claim. His broker license expired 2002 six years before he sold any real property with this estate.

C & D do not refute their standing in re Estate of Jones¹ because they were not aware of the fraud, embezzling and mismanagement until after the declaration of completion of probate was filed. All four heirs filed and also showed up for mediation.

Phil Harder does not address C & D's argument regarding that both sides agreed upon mediation. Therefore, the motion of mediation is not deficient as argued in the brief of respondent p. 2.

For the reasons set forth in Appellant's opening brief, the court of Appeals must reverse the lower court's ruling.

A petition is simply "a document embodying a formal written request," Webster's Third New International Dictionary 1690 (1993). Whether titled a motion or petition, therefore the motion of mediation suffices as a petition for a formal accounting.

¹ *In re Estate of Jones*, 152 Wn.2d 1,9,193 P.3d 147

Notice of mediation under RCW 11.96A.300 clearly states that if no agreement has been made then the court shall decide any issues at a court hearing. No hearing was ever set for this matter.

RCW 11.28.250 based on this statutory construction, the court finds that when a personal representative breaches his/her fiduciary duty to the beneficiaries.

- (9) An accounting from a personal representative or trustee RCW 11.96A.030(2)(c)(v))
- (10) The determination of fees for a personal representative or trustee RCW 11.96A.030(1)(c)(v)).

RCW 11.96A.300 squarely placed the burden of proof on Phil Harder to dispute the facts from which the lower court could determine that he breached his fiduciary duties.

A notice of mediation is sufficient to invoke the jurisdiction of the court and is construed as a petition for an account and/or mediation notice. It also serves as a functional equivalent of a petition for an accounting.

CONCLUSION

To hold otherwise would be to elevate form over substance. Phillip Harder suffered no prejudice by having the request named a motion instead of a petition. He had notice of the substantive issues and the relief C&D were seeking and was on notice. C&D request that the ruling by this court be reversed and remand with instructions.

RESPECTFULLY SUBMITTED this 19th day of March, 2014

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CERTIFICATE OF SERVICE

I hereby certify that I served the forgoing **Reply Brief of Appellant** on:

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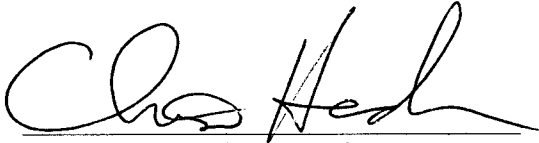
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DATED this 19th day of March, 2014.


Chris S. Harder